

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PHILLIP PULLUM,
Plaintiff,

v.

RYAN TAJAGUE,¹
Defendant.

Case No. [18-cv-00517-YGR](#) (PR)

ORDER OF DISMISSAL

Plaintiff Phillip Pullum was a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action was filed on January 24, 2018. Dkt. 1. On April 11, 2019, Defendants gave notice of Plaintiff's death by filing a document entitled, "Defendants City of Pleasanton and Officer Ryan Tajague's Suggestion of Death Upon the Record Under the Federal Rules of Civil Procedure Rule 25(a)(1)." Dkt. 19. In an Order dated May 15, 2019, the Court elaborated on Defendants' filing, stating as follows:

... the record shows that the attorney for Defendant Tajague and the City of Pleasanton, Sheila D. Crawford, Esq., has filed with the Court a suggestion of death of the litigant, stating that the Alameda County Sheriff's Office has informed her that Plaintiff died on November 27, 2018. Dkt. 19 at 1; Crawford Decl. ¶¶ 2-3; Dkt. 19-1 at 4. Attorney Crawford has also submitted a declaration indicating that on March 27, 2019, she served Plaintiff's mother, Linda Teasley-Pearson,² with a copy of the Suggestion of Death upon the Record. Crawford Decl. ¶ 7; Dkt. 19-1 at 6.

Dkt. 20 at 1-2 (footnote renumbered).

Rule 25(a)(1) provides:

If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of

¹ The Court has corrected the spelling of Defendant Tajague's last name, which was originally misspelled as "Tujague" in prior orders. *Compare* Dkt. 19 at 1 *with* Dkt. 16 at 1-2.

² Ms. Teasley-Pearson has been identified by Attorney Crawford as Plaintiff's mother after that attorney "conducted a reasonable investigation as to a legal representative of [Plaintiff's] estate or an appropriate successor upon which to serve notice of . . . Suggestion of Death Upon the Record Under the Federal Rules of Civil Procedure Rule 25(a)(1)" Crawford Decl. ¶¶ 4-7.

the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of statement of the fact of the death as provided for herein for the service of the motion, the action shall be dismissed as to the deceased party.


Fed. R. Civ. P. 25(a)(1). In order for the ninety-day period for substitution to be triggered, a party must formally suggest the death of the party upon the record and must serve other parties and nonparty successors or representatives of the deceased with a suggestion of death in the same manner as required for service of the motion to substitute. Fed. R. Civ. P. 25(a)(1); *Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994). Non-party successors or representatives of the deceased party must be served the suggestion of death in the manner provided by Rule 4 for the service of a summons. *Barlow*, 39 F.3d at 232-34.

As explained above, Defendants identified and personally served one potential successor on March 27, 2019. *See* Crawford Decl. ¶ 6; Ex. B. Thus, Defendants' April 11, 2019 filing entitled, "Defendants City of Pleasanton and Officer Ryan Tajague's Suggestion of Death Upon the Record Under the Federal Rules of Civil Procedure Rule 25(a)(1)," triggered the ninety-day period set forth in Rule 25 of the Federal Rules of Civil Procedure. *See Barlow*, 39 F.3d at 233; Fed. R. Civ. P. 25(a)(1). Because no motion for substitution was filed on or before July 10, 2019 (which is 90 days after the April 11, 2019 filing), the Court DISMISSES this action pursuant to Rule 25(a).

The Clerk of the Court is directed to correct the spelling of Defendant's name on the Court docket by substituting "Tajague" for "Tujague."

IT IS SO ORDERED.

Dated: July 17, 2019


YVONNE GONZALEZ ROGERS
United States District Judge